

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

_____)	
CONCETTA NYMAN,)	
Plaintiff,)	
)	
v.)	Civil Action No. 05-10412-JLT
)	
FEDERAL RESERVE BANK)	
OF BOSTON,)	
Defendant.)	
_____)	

AFFIDAVIT OF ILENE ROBINSON SUNSHINE

Ilene Robinson Sunshine, being first duly sworn, states as follows:

1. I am an attorney admitted to practice law in Massachusetts since 1979. I am counsel to Defendant in the above-captioned matter.
2. A genuine copy of excerpts from the deposition of Concetta Nyman are attached hereto as Exhibit 1.
3. A genuine copy of excerpts from the deposition of Robert E. Singer, M.D. are attached hereto as Exhibit 2.

SIGNED UNDER THE PENALTIES OF PERJURY
THIS 15th DAY OF MAY, 2006.

/s/ Ilene Robinson Sunshine
Ilene Robinson Sunshine

Certificate of Service

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non registered participants on May 15, 2006.

/s/ Ilene Robinson Sunshine

EXHIBIT 1

VOLUME: 1
PAGES: 1 through 128

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CONCETTA NYMAN)
Plaintiff,)
VS.)
FEDERAL RESERVE BANK)
OF BOSTON,)
Defendant.)

 **ORIGINAL**

DEPOSITION OF CONCETTA NYMAN, a witness
called on behalf of the Defendant, taken pursuant
to the provisions of the Massachusetts Rules of
Civil Procedure, before Lisa W. Starr, a
Registered Professional Reporter/Certified
Realtime Reporter and Notary Public in and for
the Commonwealth of Massachusetts, at the offices
of Sullivan & Worcester, One Post Office Square,
Boston, Massachusetts, on August 29, 2005,
commencing at 9:30 a.m.

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1 APPEARANCES:

2 FOR THE PLAINTIFF:

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4 BY: David Green, Esq.

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5 FOR THE DEFENDANT:

6 SULLIVAN & WORCESTER, LLP

7 BY: Ilene Robinson Sunshine, Esq.

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I N D E X

<u>Witness</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
CONCETTA NYMAN				
(By Ms. Sunshine)	4			

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1 done it, but I can't say for a hundred percent 09:36:42
2 sure that I never participated. 09:36:46

3 Q. Did you ever sue anybody before the bank? 09:36:49

4 A. No. 09:36:52

5 Q. Did anyone ever sue you? Have you ever 09:36:53
6 been involved in any kind of legal proceeding 09:37:04
7 before? 09:37:07

8 A. I've gone to workmans comp. I've had 09:37:08
9 hearings with them. 09:37:12

10 Q. How many times have you filed a workmans 09:37:14
11 comp claim? 09:37:19

12 A. Twice. 09:37:20

13 Q. Do you remember when that was? 09:37:21

14 A. The first time was in 2000, August. 09:37:22

15 Q. When was the second time? 09:37:36

16 A. Just recently. I don't know. We went to 09:37:37
17 court a couple of months ago. I don't recall the 09:37:47
18 dates. 09:37:49

19 Q. You don't remember when you actually 09:37:50
20 filed the claim? 09:37:52

21 A. No. 09:37:53

22 Q. Do you remember when you stopped working? 09:37:53

23 A. Yes. I stopped working in March of, 09:37:55
24 March 26 of 2003, but I didn't file the claim for 09:37:58

1 workmans comp until recently, 2005. 09:38:09

2 Q. Do you remember when your employment with 09:38:21

3 the bank was terminated? 09:38:23

4 A. They terminated me April 3. 09:38:25

5 Q. Of what year? 09:38:28

6 A. 2004. 09:38:29

7 Q. Did you file the workers comp claim 09:38:32

8 before or after you were fired? 09:38:35

9 A. After. 09:38:37

10 Q. How long have you worked at the bank? 09:38:46

11 A. Thirty-five years. 09:38:48

12 Q. Did you always have the same position 09:38:50

13 there or did you change positions? 09:38:51

14 A. No. I had a multitude of positions in 09:38:54

15 the same department. 09:38:56

16 Q. What department were you in? 09:38:57

17 A. Cash Services. 09:38:59

18 Q. Can you tell me over the years how your 09:39:01

19 positions changed? 09:39:05

20 A. I started as a money counter, currency 09:39:06

21 counter, and I progressed to a high-speed 09:39:12

22 operator. Then I became a paying-receiving 09:39:16

23 teller, then I just was a paying teller. I've 09:39:23

24 also worked in their office, their settlement 09:39:29

1 office, in between all those. 09:39:32

2 Q. Which job did you have the longest? 09:39:41

3 A. The money, the currency counter. 09:39:45

4 Q. Do you know how long you had that job? 09:39:52

5 A. About fourteen years. 09:39:54

6 Q. What year did you start working at the 09:39:56
7 bank? 09:39:58

8 A. 1968. 09:39:58

9 Q. So in the early eighties then you became 09:40:00
10 a high-speed operator? 09:40:03

11 A. Well, late seventies I became a 09:40:05
12 high-speed operator when high speed came into the 09:40:13
13 bank. So '78 or something. So it was only '68 09:40:19
14 to 1977. In the nineties I was a money counter. 09:40:31

15 Q. What did you do as a money counter? 09:40:36

16 A. Took money, and I hand-sorted them into 09:40:39
17 machines one at a time. 09:40:44

18 Q. Bills? 09:40:45

19 A. Notes, yes. Currency notes. 09:40:46

20 Q. Can you actually show me sitting here 09:40:49
21 today how you did that? 09:40:53

22 A. You take a strap of money and you hold it 09:40:55
23 and you sort it, like this (indicating). 09:40:58

24 Q. Were there different denominations? 09:41:00

1 introduced to the bank, was that also
2 currency-sorting equipment?

3 A. Yes.

4 Q. Did it replace the hand sorting that you
5 had done?

6 A. Eventually, yes.

7 Q. So that hand sorting of the straps was no
8 longer a job that anyone did at some point in
9 time?

10 A. Yes.

11 Q. By, say, the early eighties?

12 A. Well, late seventies-early eighties, they
13 still have both. Yeah, I would have to say the
14 mid-eighties there was no longer a need for the
15 individual sorting.

16 Q. So that function had been replaced by the
17 high-speed sorting?

18 A. Yes.

19 Q. You then worked on the high-speed
20 machine?

21 A. Yes.

22 Q. When you did that, were the machines
23 dedicated to specific denominations of currency?

24 A. Yes. Each machine did a specific

1 denomination.

09:43:08

2 Q. And what did it mean to work on the
3 high-speed machine? What were your actual
4 duties?

09:43:10

09:43:11

09:43:14

5 A. Well, at first it was you had to break
6 the bundles, put --

09:43:16

09:43:20

7 Q. These of the two-and-a-half pound
8 bundles?

09:43:23

09:43:26

9 A. Yes. Put them in -- you know, cut the
10 straps, we had like a razor, and you would cut
11 the straps and put them in a box that contained
12 twenty of these straps, which was, say, four and
13 a half pounds, and then take the straps off, and
14 then put little header cards. They were like a
15 3 x 5 index card, but they were color coded. You
16 would put them in there to replace the straps.

09:43:27

09:43:32

09:43:35

09:43:38

09:43:43

09:43:50

09:44:01

09:44:07

17 Then you take the box of money, put them
18 on the machine, and then feed the machine. So
19 you would take the money out of the box in the
20 order that they were in and put them in a
21 compartment, and then the machine would do single
22 notes into the conveyer belt and sort it, fit or
23 unfit. They would also shred it. The unfit
24 notes would go to a shredder.

09:44:10

09:44:14

09:44:19

09:44:21

09:44:24

09:44:29

09:44:34

09:44:40

1 Q. So when you were taking the chunks of 09:44:42
2 money and putting it into the machine, was that 09:44:44
3 in strap-size quantities? 09:44:47

4 A. Well, usually you would do four or five 09:44:51
5 straps at a time. 09:44:53

6 Q. How much did they weigh, the four or five 09:44:55
7 straps? Less than two-and-a-half pounds, right? 09:44:57

8 A. Right. 09:45:01

9 Q. Maybe a pound? 09:45:02

10 A. No. If you figure, I don't know the 09:45:03
11 mathematics of it. A bundle weighed two-and-a- 09:45:08
12 quarter pounds, so ten straps, divide that by 09:45:13
13 two-and-a-quarter pounds, so two ounces? I don't 09:45:17
14 know. 09:45:25

15 Q. So you were lifting a few ounces at a 09:45:26
16 time? 09:45:28

17 A. Right. 09:45:29

18 Q. And putting it into the machine? 09:45:30

19 A. Correct. 09:45:32

20 Q. And then you never saw those notes again 09:45:32
21 once they went into the machine? 09:45:35

22 A. Well, they used to strap them up as fit. 09:45:36
23 So we would take the fit out of the machine and 09:45:39
24 have to put them in bundles of ten and put rubber 09:45:41

1 bands on them and then put them aside so that 09:45:48
2 they could be sent to the banks. 09:45:53

3 Q. So the same amount of currency that you 09:45:55
4 put in on one end you took out on the other? 09:45:57

5 A. Well, not necessarily because it would 09:46:00
6 shred the unfit, the dirty, the broken, the 09:46:02
7 ripped, the torn. 09:46:06

8 Q. But whatever came out the other end as 09:46:07
9 fit, you would pick it up in the same basic 09:46:10
10 weight quantities as the others? 09:46:13

11 A. Right, four or five straps and put them 09:46:15
12 together with ten, as ten, and put rubber bands 09:46:18
13 on them. 09:46:22

14 Q. And what happened to the money then once 09:46:23
15 you finished processing them? 09:46:25

16 A. We had to put them in a container. Well, 09:46:27
17 we put them in a plastic bag and shrink-wrap it 09:46:29
18 so it was sealed, and then they all go in a 09:46:35
19 container. In the beginning, we would take the 09:46:40
20 containers and wheel them to a teller team that 09:46:42
21 would pick up the fit currency. Then they would 09:46:52
22 make sure there was ten straps in all of them and 09:46:55
23 run them off. 09:47:04

24 Q. Never to be seen again, by you anyway? 09:47:05

1 A. Yes, it was.

09:49:36

2 Q. And can you describe what a paying-
3 receiving teller did at the time you took that
4 job on?

09:49:38

09:49:41

09:49:43

5 A. They're two different specific jobs.

09:49:45

6 Receiving, what we did is money from different

09:49:50

7 banks would come in in bags, bags of money. They

09:49:59

8 would -- we would go in and pick, as a receiving

09:50:07

9 teller, we would take a container with all these

09:50:12

10 bags in it, whether they be five bags, eight

09:50:16

11 bags, twelve bags, and we'd check to make sure

09:50:19

12 that the bag didn't have any holes or rips or

09:50:24

13 tears in it.

09:50:31

14 We would bring them back to our little

09:50:32

15 area, our little room, there were two of us. The

09:50:34

16 first one would cut the seals off the bags, and

09:50:41

17 it had a tag on it that said what was in the bag

09:50:48

18 by denomination. We'd open the bag, compare it

09:50:52

19 to the amount of money that was in the bag with

09:50:59

20 the tag, push it down to my partner, and he would

09:51:03

21 do the same thing. He would check to make sure

09:51:11

22 -- he would check to see how much was in there,

09:51:15

23 call the amount off, and I had the tag, and I

09:51:17

24 would say yes, and he would take it and put the

09:51:21

1 money in containers.

09:51:24

2 Then at the end of the night, we would
3 settle to make sure that all the tags added up to
4 all the money we had by denominations. Then we
5 would put them in containers, seal the
6 containers, have to push these containers into
7 the vault and store them.

09:51:28

09:51:30

09:51:34

09:51:38

09:51:40

09:51:42

8 Q. When you say containers, what were they
9 like?

09:51:48

09:51:52

10 A. At the beginning, they were metal carts
11 that had like rolling wheels. We had a car track
12 system that they used to come down from the vault
13 on a car track system, and they would be large
14 square plastic containers with metal sides on it
15 that held, I don't remember how many bundles it
16 held, quite a lot, but we would take these little
17 roller containers and push them to the conveyer
18 belt and push the square box with all the money
19 in onto this cart and then lock it in.

09:51:52

09:51:58

09:52:04

09:52:07

09:52:13

09:52:17

09:52:23

09:52:27

09:52:29

09:52:32

20 These metal things were quite big. They
21 were, the containers were about this big --

09:52:42

09:52:46

22 Q. Maybe about three feet?

09:52:52

23 A. About three feet. They were square.

09:52:53

24 Q. How tall?

09:52:56

1 A. About three feet deep. It had a little 09:52:57
2 flap on the front that you could reach in and 09:53:01
3 take the money out. The cart was about three 09:53:05
4 feet high. So this cart, this box stood on this 09:53:16
5 cart, and you could go in and out. 09:53:21

6 Q. Do you know how much the carts weighed 09:53:25
7 when they were full of money? 09:53:27

8 A. I don't know how much they weighed. They 09:53:29
9 were quite heavy. That was receiving. 09:53:31

10 Now, paying teller, what we did was we 09:53:40
11 would have money. We would go and get -- we 09:53:45
12 didn't have balances, big balances. We would go 09:53:50
13 to a team and get new currency, and the fit 09:53:56
14 currency that the high-speed operators had turned 09:54:03
15 over to the tellers, they had a balance. We 09:54:06
16 would get different denominations. We would see 09:54:08
17 what we needed to pay out to the banks. And we 09:54:11
18 would put them -- also two people, my partner 09:54:15
19 was the head teller, so he was a higher grade 09:54:24
20 than I was, he would read a ticket that said what 09:54:33
21 the bank wanted, put it on the counter, and I 09:54:34
22 would take the money, put it in a bag, see how 09:54:39
23 much it was, tell him, okay, this is \$120,000, 09:54:49
24 and he would say yes. 09:54:56

1 He would give me the tag, I would put it 09:54:57
2 in a bag, and put it in this container, seal it, 09:54:59
3 put it in the container, and that's what we would 09:55:05
4 do continually all day until a certain amount of 09:55:10
5 orders that we had were filled. And then we 09:55:14
6 would push these containers up to the conveyer 09:55:18
7 belt, put them on the conveyer belt, and they 09:55:20
8 would go in the vault. 09:55:26

9 Then the next morning, we would take 09:55:27
10 these little carts, go and call out our money on 09:55:30
11 the computer, and then -- actually, we would 09:55:34
12 call out our money, and it would go upstairs on a 09:55:45
13 conveyer, like a dumbwaiter, because the dock 09:55:48
14 area was one level above us. We would go 09:55:52
15 upstairs, have these same carts, take them off 09:55:56
16 the conveyer belt, and pay them out to the 09:55:59
17 carriers, like Brinks or Wells Fargo, and they 09:56:03
18 would come in and check it off to make sure 09:56:10
19 that's what they were supposed to have. Then 09:56:14
20 they would put them in their car. That was the 09:56:16
21 paying. That was at the beginning. That's when 09:56:19
22 I did both jobs, I received and I paid, depending 09:56:25
23 on whether they needed us. 09:56:30

24 The car track system was taken out 09:56:33

1 because it kept breaking. So they brought these 09:56:39
2 containers that were on wheels, and they were 09:56:42
3 probably two feet wide, and off the ground they 09:56:49
4 were probably a foot and a half off the ground, 09:56:57
5 clear plastic. They fit twelve bundles, so they 09:57:01
6 were about, I don't know, four feet wide and four 09:57:10
7 feet high. They had a top that the top came up 09:57:19
8 and the front came down. 09:57:25

9 Now, those with a full container of 09:57:27
10 money, they held 240 bundles of ones, and 252 09:57:31
11 bundles of tens and twenties. They weighed 09:57:39
12 almost a thousand pounds full. We had to use 09:57:43
13 them receiving. We would put them in the bags 09:57:48
14 and have to push them to the vault, not all the 09:57:54
15 way into the vault because now we had our own 09:57:59
16 balances. Eventually, we had our own, as a 09:58:03
17 paying teller, we had our own balances. 09:58:08

18 So now we had millions of dollars. I had 09:58:10
19 five billion dollars in a balance. So I had fit 09:58:15
20 currency, new currency, and we had to put them in 09:58:20
21 these containers. 09:58:24

22 Then we got trunks, which were at the 09:58:28
23 time black trunks. They were square. They were 09:58:33
24 a wheel high off the ground, which was, I don't 09:58:38

1 know, six inches, seven inches off the ground. 09:58:41

2 They weighed over a, well over a thousand pounds 09:58:45

3 full. They held three hundred bundles. 09:58:51

4 Q. And you had to move those, also? 09:58:56

5 A. We had to push them into the elevator, 09:58:58

6 into the vault, out of the vault. 09:59:01

7 Q. You used those, also, as a paying and 09:59:08

8 receiving teller? 09:59:10

9 A. Yes. 09:59:11

10 Q. So if you started that job in 1980 or 09:59:13

11 thereabouts, how long did you stay as a paying 09:59:15

12 and receiving teller? 09:59:19

13 A. Well, this is where I'm going to get very 09:59:20

14 confused because what happened is I worked as a 09:59:22

15 paying-receiving teller, and then they split the 09:59:27

16 paying-receiving area, so receiving went upstairs 09:59:31

17 and paying stayed downstairs. I was just a 09:59:36

18 paying teller. I don't know what year that was. 09:59:39

19 And then -- I forgot I had -- I didn't 09:59:45

20 list this as a job. I was a supervisor. I 09:59:50

21 became a supervisor of the high-speed area. 09:59:55

22 Q. Was that after you had been a paying and 10:00:00

23 receiving teller? 10:00:02

24 A. Yes. 10:00:04

1 Q. You went back to high speed? 10:00:04

2 A. When they split us, I was a paying 10:00:06

3 teller. Then after I was just the paying teller, 10:00:08

4 I became a receiving teller. I don't remember 10:00:11

5 the year that was. 10:00:16

6 Q. So you did paying and receiving. Then 10:00:22

7 you did paying, then just receiving? 10:00:24

8 A. No. I didn't do -- I just did paying. 10:00:27

9 Q. Then you became a high-speed supervisor? 10:00:31

10 A. Yes. 10:00:34

11 Q. Do you remember when that was? 10:00:35

12 A. No, I don't remember the year. 10:00:36

13 Q. How long were you a high-speed 10:00:38

14 supervisor? 10:00:40

15 A. I was a high-speed supervisor until 1993. 10:00:42

16 Q. Do you remember, I know you don't know 10:00:50

17 the dates that you were the supervisor, but do 10:00:54

18 you remember how many months or years you were a 10:00:57

19 supervisor? 10:00:59

20 A. I could take a guess. 10:01:02

21 MR. GREEN: Don't guess. 10:01:04

22 A. I won't do that. 10:01:06

23 Q. Was it more than a year? 10:01:08

24 A. Yes. 10:01:09

1 A. It was voluntary. 10:05:26

2 Q. And you elected to work overtime on some 10:05:27
3 occasions? 10:05:29

4 A. On some occasions. 10:05:31

5 Q. Why did you stop being a high-speed 10:05:34
6 supervisor? 10:05:37

7 A. I had -- my husband's nephew was working 10:05:43
8 on my shift, and they said that was against the 10:05:50
9 rules because he was related to me, and I wasn't 10:05:53
10 supposed to have a relation. So they demoted me. 10:05:56

11 Q. Had you hired him? 10:06:01

12 A. No, I didn't hire him. My section had 10:06:02
13 that was over the shift hired him. 10:06:12

14 Q. But -- 10:06:15

15 A. But relatives aren't supposed to work 10:06:16
16 there. I didn't consider him a close relative. 10:06:19
17 He was my husband's nephew; he wasn't my nephew. 10:06:22
18 When they discovered that he was my husband's 10:06:28
19 nephew, they thought that was, you know, so they 10:06:31
20 demoted me. 10:06:36

21 Q. And what job did you then go to? 10:06:40

22 A. I worked in the settlement area. 10:06:42

23 Q. Do you remember when that was? 10:06:47

24 A. November of '93. 10:06:52

1 A. Well, the final time was March 26, 2003. 10:11:29
2 The first time I went out on workmans comp July 10:11:32
3 31 of 2000 with frozen shoulders for six-and-a- 10:11:41
4 half months. Actually, that was the last time I 10:11:46
5 was a paying teller. 10:11:50

6 Q. So you worked -- sorry. 10:11:51

7 A. Because when I went back after six-and-a- 10:11:54
8 half months, I went to the high-speed area. 10:11:57

9 Q. So you worked as a paying teller from 10:12:00
10 somewhere in it looks like early 1994 until July 10:12:05
11 of 2000 when you went out on workers comp? 10:12:09

12 A. Yes. 10:12:13

13 Q. That was the job where you had to push 10:12:13
14 the containers that weighed a thousand pounds? 10:12:15

15 A. Yes. Plus I had a whole balance of new 10:12:17
16 currency. New currency was in blocks of 80 10:12:20
17 bundles -- no, no -- yes. So they weighed 40 10:12:27
18 pounds. They were in packages of new currency. 10:12:38

19 We had to receive them from the BEP. And 10:12:43
20 when we received them, they were on those 10:12:52
21 three-sided containers, and there were 30 of 10:12:55
22 those on each container. Usually, there was like 10:12:59
23 120 or 160. We had to take them off, which was 10:13:02
24 over my head, and check to make sure there was no 10:13:06

1 holes in the plastic, throw all 120 or 160 10:13:13
2 packages onto another three-siders, and then we'd 10:13:18
3 wheel them downstairs. Well, we would wheel them 10:13:25
4 to the elevator and from the elevator downstairs 10:13:34
5 to the vault. Then we stacked most of them on 10:13:37
6 the floor. Well, first we had to count them. 10:13:40

7 Now, we counted them. We had to take 10:13:47
8 them off these three-siders, make sure there was 10:13:50
9 80 in each pack, put them back on the 10:13:53
10 three-siders or on pallets. Then we'd have to 10:13:57
11 take them and put them in the vault. 10:14:02

12 Then when we paid out currency to the 10:14:08
13 banks, we had to go into the vault, either take 10:14:10
14 these three-siders with all the new, or if they 10:14:13
15 were on the floor stacked high, we'd have to take 10:14:17
16 them off the pallets that were stacked high on 10:14:21
17 the floor. Then we had to put them in bags or 10:14:26
18 put them in these trunks that we had and put them 10:14:30
19 out. 10:14:35

20 Q. So, who supervised you as a paying teller 10:14:37
21 at that point before you went out in July of 10:14:41
22 2000? 10:14:47

23 A. Arthur Sheehan. 10:14:47

24 Q. What was his title? 10:14:53

1 A. He was the paying teller supervisor. 10:14:55

2 Q. Was there some period of time before you 10:15:02
3 actually went out of work where you began to not 10:15:09
4 feel well? 10:15:09

5 A. Well, about the month of July is when I 10:15:09
6 really started being very bad. For about three 10:15:16
7 months my shoulders were kind of sore. They 10:15:27
8 weren't too bad. When I would blow dry my hair, 10:15:31
9 my arms would get sore. But after July 1, that's 10:15:35
10 when it was really bad. I couldn't move my 10:15:44
11 shoulders. 10:15:48

12 I went on vacation on July 4 week, and I 10:15:50
13 couldn't dive into a pool because I couldn't lift 10:15:54
14 my arms up. I called my doctor, as a matter of 10:15:57
15 fact, when I was in New Hampshire. I said I need 10:16:00
16 to see you immediately; I can't move my arms. 10:16:03

17 They did all kinds of tests. It was my 10:16:09
18 primary care physician. She did all kinds of 10:16:12
19 tests for different things. There was nothing 10:16:15
20 that they could find. So she made an appointment 10:16:23
21 with a neurologist. 10:16:27

22 Q. Who was your primary care physician? 10:16:29

23 A. At the time, it was Kate Spurrier, but my 10:16:31
24 primary care physician is Robert Singer. He was 10:16:35

1 my primary care physician for before and after 10:16:39
2 her. He had a health problem, so she took his 10:16:42
3 place for a short period of time. So he was kept 10:16:46
4 up until my medical problems. 10:16:53

5 Then I continued to work, and I couldn't 10:17:03
6 move because I couldn't slide -- I had to slide 10:17:07
7 money over because at that time I was the head 10:17:12
8 paying teller. I had to put money over to my 10:17:15
9 partner, and I had to slide the tag. And when I 10:17:19
10 would slide it like this, I bent over in pain. I 10:17:32
11 couldn't move this arm. That was the end of 10:17:35
12 July. That's when I went out and I went to the 10:17:37
13 doctor, and they said I had frozen shoulders. 10:17:40

14 At that time, it was just the right 10:17:45
15 shoulder. Within that time, my left shoulder was 10:17:46
16 also frozen. So at that point I couldn't move 10:17:52
17 either shoulder. 10:17:55

18 Q. Who diagnosed you with frozen shoulders? 10:17:57

19 A. Dr. Asanti at the Mass. General Hospital. 10:18:00

20 Q. Do you know what kind of specialty he is? 10:18:05

21 A. He was a neurologist. 10:18:09

22 Q. Is that when you filed the workers comp 10:18:19
23 claim? 10:18:22

24 A. Yes. 10:18:23

1 Q. Was that claim allowed? 10:18:23

2 A. It was allowed until I went to see their 10:18:26

3 doctor, and their doctor said, no, frozen 10:18:29

4 shoulder was not work related, and they denied 10:18:33

5 it. Then we went to a hearing, and they allowed 10:18:36

6 it. 10:18:40

7 Q. So how long were you out for that? 10:18:49

8 A. Six-and-a-half months. 10:18:51

9 Q. I take it at some point you were cleared 10:19:01
10 to work? 10:19:04

11 A. Well, they told me I was clear. Workmans 10:19:04
12 comp said I could go back to work. My doctor 10:19:07
13 told me I should be on light duty, no lifting, 10:19:11
14 pulling, pushing, anything over five or ten 10:19:14
15 pounds. And I couldn't lift or push anything up 10:19:20
16 over my chest. 10:19:24

17 When I went back to work, my manager told 10:19:28
18 me that they didn't have light duty, but they 10:19:32
19 would put me on the high-speed floor, and that's 10:19:36
20 what I did. I went into the high-speed floor. 10:19:43

21 Q. Is there something in writing that you 10:19:54
22 have from your doctor that said you had a 10:19:57
23 10-pound lifting restriction and couldn't lift 10:20:00
24 above your shoulders? 10:20:03

1 A. I have a half a dozen letters. 10:20:05

2 THE WITNESS: Does she have that copy 10:20:08
3 that says that? 10:20:10

4 Q. Well, you need to answer my question 10:20:14
5 without asking your lawyer the answer. 10:20:16

6 A. I'm sorry. I have a number of letters. 10:20:19

7 Q. They say you have a 10-pound lifting 10:20:21
8 restriction? 10:20:23

9 A. Yes. 10:20:24

10 Q. And any other restriction? 10:20:25

11 A. I couldn't push, pull, or anything over 10:20:26
12 that, and I couldn't lift anything over my chest. 10:20:29

13 Q. Were those letters that you brought in 10:20:35
14 and gave to somebody in the office? 10:20:37

15 A. I gave it to my medical department. 10:20:38

16 Q. Anyone in particular? 10:20:43

17 A. At the time, her name was, I don't 10:20:46
18 remember her name. 10:20:51

19 Q. Do you know what her position was? 10:20:53

20 A. She was the nurse. 10:20:55

21 Q. Was it Maureen Manning? 10:20:58

22 A. Maybe. Yes, I believe so. Is that who 10:21:03
23 the nurse was there? 10:21:08

24 Q. I'm just asking if you remember who it 10:21:10

1 was. 10:21:12

2 A. I think it was Maureen. I don't remember 10:21:13
3 her last name. 10:21:15

4 Q. And who was your manager at the time you 10:21:18
5 came back from your workers comp leave? 10:21:25

6 A. Joe Bosco. 10:21:31

7 Q. I thought when you went out as a paying 10:21:32
8 teller your manager was Arthur Sheehan? 10:21:35

9 A. He was a high-speed supervisor. 10:21:38

10 Q. You told me he was the paying teller 10:21:41
11 supervisor. 10:21:44

12 A. I'm sorry, Arthur Sheehan was the paying 10:21:46
13 teller supervisor. Joe Bosco was the manager of 10:21:52
14 high speed. 10:21:54

15 Q. So at the time you went out on your 10:21:59
16 leave, Arthur Sheehan was your supervisor? 10:22:00

17 A. Yes, I'm sorry. 10:22:03

18 Q. When you came back from your leave did 10:22:04
19 you talk to Mr. Sheehan? 10:22:06

20 A. No. 10:22:07

21 Q. Did you believe that you were capable of 10:22:08
22 going back to being a paying teller? 10:22:09

23 A. No. I could not do those functions. 10:22:12
24 That's why I was put on high speed, because that 10:22:15

1 was the only light duty that they had. 10:22:20

2 Q. Now, before you described that the high 10:22:24
3 speed involved lifting the four-and-a-half pound 10:22:28
4 bundles and the straps that were a few ounces and 10:22:32
5 then you put them in the machine. So you weren't 10:22:38
6 required on the high-speed machine to lift more 10:22:40
7 than ten pounds, right? 10:22:42

8 A. Well, you were because the containers 10:22:44
9 weighed over a thousand pounds that you had to 10:22:48
10 push and pull to get them into the high-speed 10:22:51
11 area. Plus the fact that you had to take them 10:22:56
12 out of the containers to count them. 10:22:58

13 So, it was a matter of you had to move 10:23:07
14 these containers, these bundles to different 10:23:10
15 areas of the room. 10:23:14

16 Q. These are the four-and-a-half pound 10:23:19
17 bundles? 10:23:21

18 A. Two-and-a-half pound bundles. 10:23:22

19 Q. So moving the two-and-a-half pound 10:23:24
20 bundles -- 10:23:27

21 A. Was not the problem. It was when you put 10:23:28
22 them with four or five of them, when you had to 10:23:30
23 lift four or five bundles at a time that it 10:23:33
24 became a problem. 10:23:36

1 Q. Well, by my count, you could lift four of 10:23:37
2 them and still be within the ten-pound 10:23:40
3 restriction? 10:23:43

4 A. Right, exactly. 10:23:44

5 Q. So the bundles were not the problem when 10:23:45
6 you came back? 10:23:46

7 A. Correct. 10:23:48

8 Q. In your mind, it was pushing the 10:23:48
9 containers? 10:23:51

10 A. Correct. 10:23:52

11 Q. Is it your testimony that when you came 10:23:52
12 back from your workers comp leave in 2000 that 10:23:54
13 you were required to push the thousand-pound 10:23:57
14 containers around the department? 10:24:02

15 A. Well, at the time, no. They allowed me, 10:24:03
16 the other people in the room, at that time there 10:24:06
17 was three or four people in a room, and the other 10:24:08
18 people in the room did that. I didn't have to 10:24:12
19 push containers. 10:24:14

20 Q. So you came back to work sometime toward 10:24:16
21 the end of 2000 or beginning of 2001? 10:24:21

22 A. I came back February 12, 2001. 10:24:26

23 Q. And you were on a 10-pound lifting 10:24:30
24 restriction? 10:24:33

1 A. Right. 10:24:34

2 Q. Which you communicated to the medical 10:24:34
3 department? 10:24:36

4 A. Yes. 10:24:37

5 Q. As far as you know, the medical 10:24:37
6 department communicated that to some supervisor 10:24:41
7 personnel because you ended up being transferred 10:24:44
8 to the high-speed area, correct? 10:24:46

9 A. Correct. 10:24:50

10 Q. In that function, you were not required 10:24:50
11 to push the thousand-pound containers? 10:24:56

12 A. Correct, at that time. 10:24:59

13 Q. And the bundles that you were carrying 10:25:00
14 were within the 10-pound restriction? 10:25:03

15 A. Yes. 10:25:06

16 Q. You were told you could limit whatever 10:25:07
17 else you were asked to do to your medical 10:25:08
18 conditions at the time? 10:25:11

19 A. Correct. 10:25:13

20 Q. Did you have a problem with that? 10:25:13

21 A. No. 10:25:15

22 Q. So you agree that the bank then did what 10:25:15
23 your doctor recommended at that time? 10:25:17

24 A. At that time. 10:25:19

1 Q. How long did that medical restriction 10:25:20
2 stay in place? 10:25:23
3 A. Until I left. 10:25:25
4 Q. Until you left your job finally? 10:25:27
5 A. Yes. 10:25:29
6 Q. So it was in place for some couple of 10:25:29
7 years or a few years? 10:25:32
8 A. Yes, correct. 10:25:34
9 Q. And did you keep bringing in notes 10:25:35
10 renewing this restriction? 10:25:37
11 A. Correct. 10:25:38
12 Q. Did the restriction ever change? 10:25:39
13 A. No. 10:25:41
14 Q. So the only restriction you were under 10:25:42
15 from the time you returned in February of 2001 10:25:44
16 until the last day you ever worked at the bank 10:25:47
17 was a 10-pound lifting restriction? 10:25:50
18 A. Correct. 10:25:52
19 Q. And is it your belief that at some point 10:25:55
20 the bank stopped honoring the medical restriction 10:25:58
21 that you were under? 10:26:03
22 A. Yes. 10:26:04
23 Q. When was that? 10:26:05
24 A. I don't know exactly when, but it was 10:26:07

1 A. Yes. 10:29:45

2 Q. You had communicated your medical 10:29:46
3 restriction to them? 10:29:47

4 A. Yes. 10:29:48

5 Q. They had told you that they would honor 10:29:49
6 that restriction, correct? 10:29:51

7 A. Correct. 10:29:52

8 Q. And they had honored it for at least some 10:29:53
9 period of time, at least according to you? 10:29:55

10 A. Yes. 10:29:58

11 Q. Now all of a sudden, you think you're in 10:29:58
12 a position where you have to do this job, right? 10:30:01

13 A. Right. 10:30:03

14 Q. Did it ever occur to you to go and tell 10:30:04
15 someone that you felt you were being put in an 10:30:07
16 untenable position? 10:30:09

17 A. Well -- 10:30:11

18 Q. Could you just answer my question? 10:30:12

19 A. I did. After the second time they told 10:30:14
20 me there was two people in the room, I went to 10:30:16
21 the medical department, to Maureen. She gave me 10:30:19
22 a letter saying that I had to be in a room with 10:30:22
23 at least three people. 10:30:25

24 I brought it down to Joe Bosco -- well, 10:30:27

1 I left it on his desk because he wasn't there. 10:30:32
2 At the time I was going home because I was in 10:30:36
3 pain. The next day when I came in, Joe Bosco 10:30:38
4 called me in the office and said, "This is 10:30:42
5 unacceptable. We cannot guaranty that you will 10:30:44
6 be in a room with more than two people." 10:30:49

7 Q. So your complaint is that you felt you 10:30:54
8 had to push the containers because you were in a 10:30:57
9 room with two people? 10:31:02

10 A. Yes, but I also did it prior to that when 10:31:04
11 there was three of us because with three people, 10:31:07
12 it slowly was a point where I was asked to run 10:31:12
13 the machine, I was asked to reconcile, I was 10:31:16
14 asked to turn the fit over. And supervisors did 10:31:20
15 make comments, oh, can you help somebody push 10:31:25
16 this container. And when I said no, they gave me 10:31:29
17 looks like, oh, yeah. 10:31:32

18 I was put in a situation where I was 10:31:37
19 forcing the people that I was working with to do 10:31:40
20 my work. 10:31:43

21 Q. So you felt guilty? 10:31:44

22 A. Exactly. 10:31:46

23 Q. And so, because you felt guilty, you 10:31:47
24 pushed the containers, right? 10:31:49

1 A. Well, if that's apparently -- 10:31:52

2 Q. Is that right? 10:31:58

3 A. Correct. 10:31:58

4 Q. So you voluntarily pushed the containers 10:31:59
5 because you felt guilty that other people had to 10:32:01
6 cover that part of your job, right? 10:32:04

7 A. Right. 10:32:06

8 Q. And not because anyone at the bank told 10:32:06
9 you to? 10:32:08

10 A. But -- 10:32:09

11 Q. No, answer my question. 10:32:10

12 A. Yes, that is correct. But when I started 10:32:12
13 getting pains and couldn't do it anymore, I was 10:32:14
14 told that it was unacceptable; that I had to work 10:32:16
15 with two people. 10:32:20

16 Q. Joe Bosco never told you you had to push 10:32:22
17 the containers, did he? 10:32:24

18 A. Well, how do you not push the containers 10:32:26
19 if you're the only other person in the room? 10:32:27

20 Q. Well, the other person pushes the 10:32:31
21 container or someone else comes in and does it 10:32:33
22 for you. Is that a possibility? 10:32:35

23 A. Well, when there's nobody around, no, it 10:32:38
24 isn't. 10:32:46

1 Q. But you didn't go to find someone, did 10:32:46
2 you? 10:32:46

3 A. Yes, we did. 10:32:46

4 Q. No, you didn't. 10:32:46

5 MR. GREEN: Objection. 10:32:46

6 Q. How many times did you go to Joe Bosco 10:32:47
7 and say there's no one here to push the 10:32:49
8 container, and I can't do it myself? How many 10:32:51
9 times did you go and do that? 10:32:53

10 A. I didn't. 10:32:57

11 Q. You never did it, did you? 10:32:57

12 A. No. 10:32:59

13 Q. So how do you know that no help was 10:33:00
14 available to you? 10:33:02

15 A. The other people, there were times when 10:33:05
16 there were other people that had gone home and 10:33:11
17 there was nobody available. 10:33:14

18 Q. Nobody in the whole bank? 10:33:17

19 A. Well, except for Joe Bosco and the 10:33:19
20 supervisor. 10:33:23

21 Q. Did you ever go ask him to help? 10:33:24

22 A. We had many containers. 10:33:26

23 Q. Just answer my question. 10:33:27

24 A. We had many containers. And yes. Joe 10:33:28

1 Bosco actually said no once. 10:33:33

2 Q. He said, no, I won't come and push it 10:33:35
3 myself? 10:33:38

4 A. Right. 10:33:39

5 Q. But he didn't tell you to go and push it, 10:33:40
6 did he? 10:33:43

7 A. No. 10:33:44

8 Q. In fact, he said, Connie, just go and do 10:33:44
9 what you can. 10:33:47

10 A. No, he never said that. 10:33:49

11 Q. What difference did it make how many 10:33:52
12 people were working in the room with you as long 10:33:55
13 as you didn't lift ten pounds? 10:33:58

14 A. But I had to lift more than ten pounds. 10:34:01
15 I had to push the containers out of the way into 10:34:04
16 the room. 10:34:06

17 Q. I'm not talking about push the containers 10:34:07
18 now. 10:34:09

19 A. Fit currency had to be put in the 10:34:11
20 containers. I had to lift bundles out of the 10:34:12
21 containers. 10:34:17

22 Q. Right. But we've already established 10:34:18
23 through your testimony that neither of those 10:34:20
24 tasks involved lifting more than ten pounds. 10:34:22

1 A. Who was to help me? 10:35:18

2 Q. Well, really, wasn't that your 10:35:19

3 supervisor's job to do that? 10:35:21

4 A. She put me in a room with two people. 10:35:23

5 Who was to help me? I was in a room with three 10:35:27

6 people, and I was counting money, and she told me 10:35:29

7 to count the money. So now it's above my head. 10:35:33

8 Q. You weren't counting it above your head 10:35:36

9 certainly. 10:35:39

10 A. No. But I had to lift up and bring it 10:35:39

11 down, which I couldn't do. 10:35:42

12 Q. Why couldn't you go and find someone to 10:35:44

13 help you get assistance to perform that part of 10:35:46

14 your job? 10:35:50

15 A. Because they told me to do it. 10:35:51

16 Q. Who told you to do it? 10:35:53

17 A. The supervisors. 10:35:55

18 Q. Which supervisors? 10:35:56

19 A. Whatever supervisors were there. 10:35:58

20 Q. Why don't you give me their names? 10:36:02

21 A. Peggy McFarland. 10:36:05

22 Q. Your testimony is that Peggy McFarland 10:36:11

23 ordered you to lift the currency over your head? 10:36:13

24 A. She told me to count the money. 10:36:16

1 was two years ago. 10:41:12

2 Q. Well, how do you know it was a warning 10:41:14
3 then if you can't remember what was said? 10:41:18

4 A. Because I got -- I did get one. I just 10:41:23
5 don't remember what was said. 10:41:33

6 Q. Was that the only discipline that was 10:41:37
7 ever taken against you? 10:41:39

8 A. I don't know. 10:41:43

9 Q. Was your pay cut in any way? 10:41:47

10 A. No. 10:41:49

11 Q. In fact, your pay was raised, wasn't it, 10:41:50
12 that year? 10:41:52

13 A. Yes. 10:41:53

14 Q. You got a pay raise every year, correct? 10:41:54

15 A. Correct. 10:41:56

16 Q. Including the year that you went home two 10:41:57
17 times a week for five months? 10:41:59

18 A. Yes. 10:42:01

19 Q. Now, as I understand it, you're claiming 10:42:34
20 in this case that the bank failed to accommodate 10:42:37
21 your medical condition. Is that your claim? 10:42:40

22 A. Yes. 10:42:43

23 Q. And can you tell me exactly in what way 10:42:44
24 you believe the bank failed to accommodate your 10:42:48

1 A. Correct. 10:44:09

2 Q. How did you have to lift the money above 10:44:09
3 your head in order to count it? 10:44:11

4 A. Well, I just told you. The containers 10:44:14
5 were over six feet. So in order to take the 10:44:20
6 money out of the containers, I had to lift over 10:44:21
7 my head to grab these bundles. There was at 10:44:24
8 least two rows. In order to put the fit currency 10:44:32
9 into the containers, I had to do the same thing. 10:44:45
10 I had to lift over my head and put these bundles 10:44:47
11 in the top rows. 10:44:51

12 Q. And you did not ask anyone else to help 10:44:58
13 you with that part of your job? 10:45:00

14 A. No, I didn't. 10:45:02

15 Q. And that's because you felt guilty? 10:45:07

16 A. Well, it was putting my stress on my 10:45:12
17 teammates. 10:45:15

18 Q. So you felt guilty? 10:45:16

19 A. Correct. 10:45:18

20 Q. That's why you didn't ask someone to help 10:45:18
21 you with the things that your doctor told you not 10:45:20
22 to do? 10:45:22

23 A. Correct. 10:45:23

24 Q. Is there any other way that you think the 10:45:25

1 A. I don't know what year she left. And so, 10:49:25
2 there were openings. Patty, the other paying, 10:49:29
3 was a paying teller and she went in there. 10:49:34
4 Evelyn Harris was also in there. She was a 10:49:39
5 receiving teller. They put her in there, and 10:49:43
6 they were Grade 9's. 10:49:52

7 Q. So you went out of work again in March of 10:49:56
8 2003, right? 10:49:59

9 A. Yes. 10:50:00

10 Q. And what happened at that time to cause 10:50:00
11 you to go out of work? 10:50:04

12 A. I couldn't move my shoulders. I was in 10:50:05
13 severe pain. I couldn't even do repetition work 10:50:07
14 at the time because my shoulder was so bad. That 10:50:12
15 was the reason I really couldn't work because I 10:50:17
16 couldn't do repetitive, I couldn't go keep moving 10:50:20
17 from here to here. So I couldn't do anything. 10:50:27

18 I went to my doctor, and she gave me a 10:50:32
19 letter, Dr. Atkinson. She replaced Dr. Asanti. 10:50:37
20 She gave me a letter saying I couldn't work. 10:50:47

21 Q. Can you tell me -- I take it, you never 10:50:49
22 went back to work again? 10:50:52

23 A. No. 10:50:54

24 Q. You're not working today? 10:50:54

1 A. Correct. 10:50:56

2 Q. Is it your view that you can never work 10:50:56

3 again in any kind of job? 10:50:59

4 A. Correct. 10:51:01

5 Q. For the rest of your life? 10:51:01

6 A. So far. 10:51:03

7 Q. And that's what you thought in March 10:51:05

8 2003, that you could not do any job at the bank? 10:51:09

9 A. No. 10:51:12

10 Q. You couldn't even work in the settlement 10:51:13

11 area? 10:51:14

12 A. At that time, I could not work. At the 10:51:16

13 time I left, I couldn't work, do anything. I 10:51:18

14 didn't realize it was going to be for the rest of 10:51:24

15 my career. 10:51:28

16 Q. When did you find that out? 10:51:30

17 A. About six months later. 10:51:37

18 Q. So, like in September of 2003? 10:51:39

19 A. Yes. 10:51:42

20 Q. You found out that you would never be 10:51:44

21 able to work again? 10:51:46

22 A. I couldn't work. I couldn't do anything 10:51:47

23 with my shoulders. 10:51:49

24 Q. Who told you that? 10:51:52

1 completely disabled from working in any job for 10:53:44
2 the rest of your life? 10:53:47

3 A. Yes. 10:53:50

4 Q. And did you tell that to the workers 10:53:51
5 compensation board in some form, either written 10:53:53
6 or oral? 10:53:56

7 A. I didn't make that statement, no. 10:53:57

8 Q. Was that -- 10:53:59

9 A. My lawyer probably did. 10:54:00

10 Q. With your authorization? 10:54:03

11 A. Yes. 10:54:05

12 Q. And do you believe sitting here today 10:54:08
13 that you are completely unable to work in any job 10:54:09
14 ever again? 10:54:13

15 A. Yes. 10:54:14

16 Q. And you believe that your doctors have 10:54:14
17 told you that that's the case? 10:54:15

18 A. Yes. 10:54:17

19 Q. Any doctor other than Dr. Singer? 10:54:18

20 A. Dr. Morley. He's an orthopedic doctor. 10:54:21

21 Q. Where does he work? 10:54:25

22 A. He's in Lowell. 10:54:27

23 Q. When did you start consulting with him? 10:54:35

24 A. In 2003. 10:54:40

1 Q. Why did you start seeing him? 10:54:42

2 A. Because a lawyer suggested that I see 10:54:46
3 him. 10:54:51

4 Q. Which lawyer? 10:54:52

5 MR. GREEN: I would object and say 10:54:54
6 that any testimony between her and her attorneys 10:54:55
7 is privileged. 10:54:58

8 MS. SUNSHINE: Well, she went and 10:55:02
9 saw him, so the fact isn't a secret. 10:55:03

10 MR. GREEN: Right. But any 10:55:06
11 conversation that she may have had with her 10:55:07
12 attorney is privileged. 10:55:09

13 Q. Was this during the course of your 10:55:15
14 workers compensation case? 10:55:16

15 A. No. 10:55:19

16 Q. It was during the course of the claim you 10:55:20
17 filed for long-term disability benefits? 10:55:22

18 A. Correct. 10:55:25

19 Q. And who represented you in that case? 10:55:25

20 A. Pat Michaels. 10:55:28

21 Q. Is that a woman? 10:55:30

22 A. Yes. 10:55:31

23 Q. Is it Patricia? 10:55:31

24 A. Patricia Michaels. 10:55:34

1 Q. She helped you file the long-term 10:55:36
2 disability claim? 10:55:38

3 A. Correct. 10:55:39

4 Q. When you filed for long-term disability 10:55:40
5 benefits, did you believe you were completely 10:55:42
6 unable to work in any job for the rest of your 10:55:48
7 life? 10:55:51

8 A. Yes. 10:55:51

9 Q. Did you make that representation to the 10:55:52
10 insurance carrier in connection with benefits? 10:55:54

11 A. Yes. 10:55:57

12 Q. Do you remember writing that on the form? 10:55:58

13 A. Yes. 10:56:00

14 Q. You wrote that? 10:56:00

15 A. I believe so, that I could not work. 10:56:01

16 Q. And was it your understanding that that 10:56:04
17 was a permanent condition that would last for the 10:56:06
18 rest of your life? 10:56:08

19 A. No, it's not understood that it's a 10:56:15
20 permanent condition. 10:56:21

21 Q. Well, what's your expectation about 10:56:21
22 whether you're going to be able to go back to 10:56:21
23 work in the future? 10:56:23

24 A. I don't know. I don't know. 10:56:24

1 Q. Was -- 10:56:28

2 A. As of right now, I can't. 10:56:30

3 Q. Was your long-term disability claim 10:56:32

4 allowed? 10:56:34

5 A. No, it was denied. 10:56:35

6 Q. And do you remember when you filed that 10:56:38

7 claim? 10:56:39

8 A. September of 2003. 10:56:42

9 Q. You had already been out of work for six 10:56:55

10 months? 10:56:57

11 A. Correct. 10:56:58

12 Q. You filed it at that time because there 10:56:59

13 was a six-month waiting period? 10:57:00

14 A. Yes, there was. 10:57:02

15 Q. Were you receiving compensation from 10:57:03

16 March of 2003 until September? 10:57:05

17 A. Yes. 10:57:08

18 Q. And -- 10:57:09

19 A. I was getting full sick pay. I was on 10:57:11

20 sick leave from the bank. 10:57:13

21 Q. You were getting workers compensation, 10:57:15

22 and the bank was supplementing it? 10:57:17

23 A. No, I was not getting workmans comp at 10:57:19

24 that time. The only time I received workmans 10:57:22

1 comp was from August of 2000 to February of 2001. 10:57:25
2 That was the only time I received workmans comp 10:57:36
3 benefits. 10:57:41

4 Q. So the bank had you on sick leave for six 10:57:41
5 months? 10:57:44

6 A. Yes. 10:57:45

7 Q. Was that under a short-term disability 10:57:45
8 plan? 10:57:47

9 A. They don't have -- basically, they don't 10:57:48
10 have short-term disability, but they do have a 10:57:52
11 certain amount of sick days during your 10:57:55
12 employment, and I had accumulated enough to 10:57:57
13 collect sick pay for that time. 10:58:01

14 Q. You accumulated enough days to be out 10:58:05
15 continuously -- 10:58:08

16 A. For a year. For a year. 10:58:09

17 Q. So how long did that sick pay last, by 10:58:13
18 the way? 10:58:15

19 A. Until April 3 of 2004. 10:58:17

20 Q. When your employment was terminated? 10:58:21

21 A. Correct. 10:58:23

22 Q. So for the entire year that you were out, 10:58:24
23 from March of '03 until April of '04, you got 10:58:27
24 your full pay? 10:58:31

1 A. Correct. 10:58:32

2 Q. Did you get your health insurance, the 10:58:33
3 same terms you would have had had you been at 10:58:35
4 work? 10:58:38

5 A. Yes. 10:58:39

6 Q. So you didn't lose any money during that 10:58:39
7 period of time? 10:58:43

8 A. No. 10:58:44

9 Q. Whatever happened with your workers 10:58:47
10 compensation claim? 10:58:48

11 A. We settled on a lump sum. 10:58:50

12 Q. Was that recently? 10:59:00

13 A. Yes. 10:59:01

14 Q. And how much money did you receive from 10:59:02
15 that settlement? 10:59:04

16 A. \$30,000. 10:59:05

17 Q. Have you been paid? 10:59:10

18 A. Yes. 10:59:12

19 Q. Were your medical bills paid as part of 10:59:13
20 that settlement? 10:59:15

21 A. No. 10:59:15

22 Q. Did the bank's insurance pay your medical 10:59:16
23 bills? 10:59:19

24 A. After 2004? 10:59:20

1 A. As far as I know. 11:01:21

2 Q. Or until you're eligible for Medicare, 11:01:21
3 perhaps? 11:01:24

4 A. As far as I know. 11:01:25

5 Q. Do you have any medical bills outstanding 11:01:26
6 that you haven't paid through insurance? 11:01:28

7 A. No. 11:01:31

8 (Recessed at 11:00 a.m.). 11:01:37

9 (Resumed at 11:07 a.m.) 11:07:14

10 Q. Did you ever receive any kind of 11:07:32
11 treatment for your shoulder condition? 11:07:35

12 A. I had a cortisone shot in my right 11:07:37
13 shoulder. 11:07:41

14 Q. Just one? 11:07:43

15 A. Yes. 11:07:43

16 Q. When was that? 11:07:44

17 A. 2004 sometime. I don't know exactly 11:07:50
18 when. 11:07:54

19 Q. Was that the first time you had a 11:07:55
20 cortisone shot? 11:08:02

21 A. I believe so. 11:08:02

22 Q. Any other treatment or therapy that 11:08:02
23 you've had over the years? 11:08:04

24 A. I had physical therapy over the years 11:08:06

1 since 2000 off and on. 11:08:08

2 Q. Are you in physical therapy now? 11:08:15

3 A. No. I do home physical therapy. 11:08:18

4 Q. What does that consist of? 11:08:20

5 A. I have an elastic, colored elastic, they 11:08:22
6 look like scarves. They're different lengths, 11:08:28
7 and they're very rubbery. The different colors 11:08:34
8 are a different tightness of it. When my first 11:08:37
9 frozen shoulders were first there, after the pain 11:08:44
10 went away I used a loose rubber band. Then as I 11:08:48
11 got better, it became tighter and tighter. So 11:08:54
12 that's what I do. So that's what I do to stretch 11:08:59
13 my arms. 11:09:07

14 Q. How many times a day do you do that? 11:09:08

15 A. Two or three times a day. 11:09:10

16 Q. For how long? 11:09:15

17 A. About ten, fifteen minutes. 11:09:16

18 Q. Is there any other course of treatment 11:09:21
19 that you're receiving now other than stretching 11:09:22
20 the elastic bands? 11:09:25

21 A. No. 11:09:27

22 Q. When was the last time you received any 11:09:27
23 kind of active treatment for your shoulders? 11:09:29

24 A. I believe the cortisone shot was the 11:09:33

1 last. 11:09:37

2 Q. In 2004? 11:09:39

3 A. Yes. It didn't work, so the doctor and I 11:09:40
4 decided that it wouldn't do any good to put one 11:09:46
5 in my other shoulder. 11:09:50

6 Q. And so, in 2004 you had a cortisone shot. 11:09:59
7 Since that time you've stretched with the elastic 11:10:07
8 bands? 11:10:10

9 A. Right. 11:10:10

10 Q. That's all that happened since 2004 in 11:10:11
11 terms of treatment or therapy? 11:10:13

12 A. Correct. I take Advil when I'm in pain. 11:10:15

13 Q. Before the cortisone shot, were you 11:10:19
14 getting any kind of active treatment or therapy? 11:10:21

15 A. I can't remember when I had the last 11:10:31
16 physical therapy session, I'm sorry. I don't 11:10:33
17 remember the dates. 11:10:36

18 Q. Was it during the year that you were out? 11:10:38

19 A. I believe so. 11:10:42

20 Q. Who did you go to for physical therapy? 11:10:44

21 A. Jean O'Toole at the Mass. General 11:10:47
22 Hospital. 11:10:56

23 Q. So what is your current plan then for 11:10:57
24 getting better? 11:11:00

1 A. There's no plan. I have tendinitis in 11:11:02
2 both shoulders. There's nothing much I can do 11:11:06
3 about it. I have a tear in my left, I'm not sure 11:11:09
4 where it is. I'm not a doctor, but it's 11:11:15
5 somewhere in a ligament or in a tendon or 11:11:19
6 something. And only thing other than to just let 11:11:22
7 it heal is to have surgery, and I'm not ready to 11:11:29
8 have major surgery on my shoulder. 11:11:35

9 Q. Weren't you given a course of weight 11:11:37
10 training at some point, lifting weights? 11:11:40

11 A. Dr. Morley informed me that I could try 11:11:43
12 lifting some 5-pound weights on my arm. 11:11:49

13 Q. Have you tried that? 11:11:53

14 A. Not yet. 11:11:55

15 Q. Well, you were given a weight-training 11:11:55
16 program in 2002. I'm reading a note from Dr. 11:11:59
17 Amante who said: "You will begin light weight 11:12:34
18 training as an effort to normalize your 11:12:36
19 strength." Did you do the weight training at 11:12:38
20 that point? 11:12:42

21 A. Light weight training? 11:12:43

22 Q. Yes, lifting weights to build strength. 11:12:45

23 A. No. I went to, when I was back at work, 11:12:48
24 they have a fitness center. I didn't lift 11:12:53

1 A. Yes. 11:20:37

2 Q. Where you live alone on the ground floor? 11:20:39

3 A. Well, I moved in literally with my sister 11:20:41
4 in her apartment at the time. 11:20:44

5 Q. Were there any limitations at that time 11:20:46
6 on your day-to-day activities? 11:20:49

7 A. Yes. 11:20:52

8 Q. Can you tell me what they were? 11:20:53

9 A. I had to -- I couldn't do my own hair. 11:20:54
10 When I took a shower and washed my hair, I would 11:21:01
11 be, my shoulders would be so sore I had to rest 11:21:04
12 for a half hour. To this day, I still cannot 11:21:08
13 blow dry my own hair because I cannot hold the 11:21:11
14 blow dryer long enough to completely dry my hair. 11:21:15
15 So somebody else has to do it, my sister, or I 11:21:19
16 have to let it go. 11:21:24

17 Q. You mean you can't hold the dryer up like 11:21:25
18 this? 11:21:27

19 A. For a long enough period of time to blow 11:21:28
20 dry my hair. 11:21:30

21 Q. Have you tried sitting in the chair and 11:21:31
22 leaning over? 11:21:35

23 A. Yes, but to do this, yeah, it's fine to 11:21:37
24 just blow dry it like that. But in order to 11:21:39

1 style it, I can't style my own hair. 11:21:42

2 Taking a shower, washing my hair for long 11:21:46
3 periods of time, I have to rest. I can't do 11:21:49
4 anything with my shoulders after washing and 11:21:53
5 putting in conditioner and everything in my own 11:21:57
6 hair. 11:22:01

7 I tried to replace the screens off her 11:22:03
8 storm door, and I can't lift my arms for more 11:22:06
9 than five minutes, just something light. I can't 11:22:09
10 do this. 11:22:13

11 When I reach for something over my head, 11:22:16
12 I still can't do a full reach. I'm very cautious 11:22:21
13 if I have to get a glass above my head out of one 11:22:30
14 of my cabinets because I'm afraid that I might 11:22:33
15 drop it. 11:22:37

16 Q. But you're able to do that, basically? 11:22:38

17 A. Well, basically. 11:22:41

18 Q. I mean, you live alone, so presumably you 11:22:42
19 get food off the shelf and get things into the 11:22:45
20 dishwasher? 11:22:48

21 A. Well, basically I live downstairs, but I 11:22:49
22 eat upstairs because my sister does the cooking. 11:22:52
23 When I go food shopping, carrying, it's minimized 11:22:56
24 my carrying the shopping bags. I have to make 11:23:02

1 more trips because I can't carry as many bags. 11:23:05

2 I can't lift anything. I have a real 11:23:10

3 hard time lifting things from one area to 11:23:15

4 another. A case of water, I can't do it. So my 11:23:18

5 shopping habits have lessened. Even my everyday 11:23:26

6 cleanliness, health habits. 11:23:32

7 Q. How have your health habits degenerated? 11:23:35

8 A. I meant taking a shower and stuff like 11:23:39

9 that. 11:23:41

10 Q. Do you take a shower every day? 11:23:42

11 A. No, I don't, as a matter of fact, because 11:23:44

12 I can't take a shower and wash my hair every day 11:23:46

13 because I can't do that every day. It's too much 11:23:49

14 on my shoulders. So I have to do a sponge bath. 11:23:51

15 Q. Do you clean your own house? 11:23:56

16 A. Parts of it. I don't do any heavy 11:23:59

17 cleaning or moving furniture or washing walls. 11:24:05

18 Q. Do you drive a car? 11:24:12

19 A. Yes, I do. 11:24:13

20 Q. Who takes the trash out on trash day? 11:24:17

21 A. My sister. Sometimes I do. 11:24:21

22 Q. Any other limitations in your day-to-day 11:24:25

23 life? 11:24:28

24 A. At this point, I don't remember any 11:24:35

1 offhand. 11:24:44

2 Q. Do you go out and socialize with people? 11:24:45

3 A. Yes, I do. 11:24:47

4 Q. Go to the movies? 11:24:48

5 A. Actually, I haven't gone to the movies in 11:24:50
6 quite a long time. 11:24:52

7 Q. But you could? 11:24:54

8 A. I could. 11:24:55

9 Q. Do you remember somebody from the 11:25:06
10 insurance company coming in to observe you at 11:25:09
11 work and write up a kind of job description about 11:25:14
12 your job? 11:25:18

13 A. Somebody watching me, specifically me? 11:25:22

14 Q. Or watching the high-speed operators? 11:25:25

15 A. Yeah, on a number of occasion the nurses 11:25:30
16 come down and people have come down, yes. 11:25:35

17 Q. Do you remember somebody from the 11:25:38
18 insurance company doing that for the purpose or 11:25:39
19 in connection with your claim for disability 11:25:41
20 benefits? 11:25:43

21 A. No, I don't. 11:25:44

22 (Complaint with the MCAD 11:26:04
23 was marked as Exhibit No. 1 for identification). 11:26:06

24 Q. Just take a look through it, and I'm 11:26:45

1 mental pain and suffering." Did you see this 12:00:37
2 before your lawyer filed it or gave it to me in 12:00:40
3 this lawsuit? 12:00:44

4 A. I don't believe so. 12:00:45

5 Q. Do you know what these numbers are based 12:00:47
6 on, this \$200,000 figure? 12:00:49

7 A. I would assume my lost wages that I can't 12:00:52
8 work, my disability, my medical bills that I've 12:00:54
9 had to pay COBRA over the years, over the past 12:00:57
10 eighteen months. 12:01:02

11 Q. How much do you get in your pension? 12:01:05

12 A. I haven't received it yet, but I believe 12:01:10
13 it's going to be \$1,500. 12:01:12

14 Q. Is that a month? 12:01:15

15 A. Yes. 12:01:16

16 Q. That will go on for the rest of your 12:01:18
17 life? 12:01:20

18 A. Yes. 12:01:20

19 Q. Have you applied for social security 12:01:21
20 disability? 12:01:23

21 A. Yes. 12:01:24

22 Q. Have you received that? 12:01:24

23 A. Yes. 12:01:25

24 Q. And when did you apply for SSI or SSDI? 12:01:26

1 A. May or thereabouts, April or May of 2004. 12:01:36
2 Q. And when was the claim approved? 12:01:40
3 A. May or June. About a month later. 12:01:48
4 Q. So you've been receiving SSDI since June 12:01:51
5 of '04? 12:01:56
6 A. Yes. 12:01:57
7 Q. And how much do you receive? 12:01:58
8 A. \$1,634. 12:02:01
9 Q. A month? 12:02:03
10 A. A month. 12:02:04
11 Q. Do you have any plans to take any further 12:02:11
12 appeal from your denial of your long-term 12:02:17
13 disability claim? 12:02:19
14 A. Yes. 12:02:21
15 Q. What steps are you taking in that regard? 12:02:22
16 A. I'm reapplying for it. 12:02:27
17 Q. What do you mean, reapplying? 12:02:32
18 A. Well, I have a lawyer that's talking to 12:02:35
19 long-term disability insurance company about it, 12:02:37
20 whatever they have to do. 12:02:41
21 Q. Are you planning to file a lawsuit 12:02:44
22 against the insurance plan? 12:02:46
23 A. I believe that's what he's going to do. 12:02:50
24 Q. Have you authorized him to do that? 12:02:53

1 A. Yes. 12:02:54

2 Q. Do you know whether papers are already 12:02:55
3 being drafted? 12:03:00

4 A. He has sent a letter asking long-term 12:03:01
5 disability, the insurance company -- yes, he has 12:03:04
6 notified the insurance company. 12:03:08

7 Q. And do you know whether there are any 12:03:12
8 negotiations underway? 12:03:14

9 A. As of right now, I don't believe there 12:03:16
10 are. 12:03:17

11 Q. Has the insurance company refused 12:03:18
12 outright to negotiate or to put you on the plan? 12:03:20

13 A. Recently? 12:03:24

14 Q. Through this lawyer. 12:03:26

15 A. As of right now, I don't believe there is 12:03:28
16 any communication back. 12:03:29

17 Q. So as far as you know, the next step is 12:03:34
18 there will be a lawsuit started on your behalf? 12:03:40

19 A. I believe so. 12:03:40

20 Q. And do you know what your benefit from 12:03:44
21 the LTD would have been if you had been approved? 12:03:46

22 A. I believe it's something like 60 percent 12:03:51
23 of my salary at the time. 12:03:54

24 Q. And what was your last salary at the 12:03:57

EXHIBIT 2

Volume 1
Pages 1-130
Exhibits per index

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Civil Action No. 05-10412-JLT

-----:
Concetta Nyman :
Plaintiff, :
V. :
Federal Reserve Bank of Boston :
Defendant. :
-----:

 **ORIGINAL**

DEPOSITION OF ROBERT E. SINGER,
M.D., a witness called on behalf of the Defendant,
taken pursuant to the Federal Rules of Civil
Procedure, before Patricia M. Haynes, a Certified
Shorthand Reporter and Notary Public in and for
the Commonwealth of Massachusetts, CSR No.:
14620F, at the Offices of Sullivan & Worcester,
LLP, One Post Office Square, Boston,
Massachusetts, on Thursday, January 5, 2006,
commencing at 2:30 p.m.

Copley Court Reporting
101 Tremont Street
Boston, Massachusetts 02108
(617) 423-5841

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18
19
20
21
22
23
24

1 A. Yes.

2 Q. When do you first recall Ms. Nyman having
3 some type of problem with her shoulders?

4 A. I don't remember the exact date, but it's
5 been four or five years.

6 Q. Did you treat her for that problem?

7 A. Peripherally I treated her. She had gone
8 to a number of specialists. And part of, most of
9 what I did was record the treatment that she was
10 receiving from the specialist who was helping her
11 with that problem.

12 Q. Did you refer her to those specialists?

13 A. At least one of them I did. Some of them
14 she made contact with and referred herself.

15 Q. Who do you recall referring her to?

16 A. At one point I referred her to a
17 rheumatologist at Mass. General, a Doctor Rahman.

18 Q. Do you recall when that was?

19 A. That was right at the beginning when she
20 first complained about her shoulder trouble. So
21 it must have been four or five years ago.

22 Q. Do you know whether she went to that
23 doctor?

24 A. She did.

1 Q. Do you know whether that doctor made any
2 diagnosis of her condition?

3 A. I don't remember what the specific
4 diagnosis was that he made for her.

5 Q. Did you ever make a diagnosis of her
6 condition?

7 A. The diagnosis that I made was frozen
8 shoulder syndrome.

9 Q. Do you recall when you made that
10 diagnosis?

11 A. That was after she saw Doctor Rahman. I
12 believe I got the phrase from him or from one of
13 his notes about her.

14 Q. Were you familiar with frozen shoulder
15 syndrome before you saw Doctor Rahman's notes?

16 A. I was not.

17 Q. So when you made that diagnosis of Ms.
18 Nyman, were you simply repeating Doctor Rahman's
19 diagnosis?

20 A. Yes.

21 Q. Or did you have an independent basis to
22 make that diagnosis?

23 A. At that time I was repeating his
24 diagnosis.

1 Q. When you say you made that diagnosis, for
2 what purpose did you make that diagnosis?

3 A. I don't understand the question.

4 Q. Did you make that diagnosis for the
5 purpose of recording it in Ms. Nyman's medical
6 records or were you conveying that diagnosis to
7 some other person or entity?

8 A. I made it for the purpose of recording it
9 in the medical record.

10 Q. Did you understand what frozen shoulder
11 syndrome was at the time that you recorded that
12 diagnosis in Ms. Nyman's medical record?

13 A. Yes, I did.

14 Q. What was your understanding of what
15 frozen shoulder syndrome is?

16 A. Frozen shoulder syndrome is a descriptive
17 term for someone with stiffness of the shoulders
18 that limits their full range of motion, stiffness
19 and pain.

20 Q. Where did you gain your understanding of
21 what the meaning of that diagnosis is?

22 A. I don't remember.

23 Q. Did you consult with Doctor Rahman about
24 the meaning of the frozen shoulder syndrome

1 diagnosis?

2 A. I don't remember speaking with him
3 personally. I do remember reading his
4 consultation notes.

5 Q. Do you recall consulting any medical
6 texts or treatises to inform yourself about what
7 frozen shoulder syndrome is?

8 A. I believe I did some reading about it at
9 the time. But I don't recall now, I don't recall
10 what I read about frozen shoulder syndrome. It's
11 typical for me to look things up and read about
12 them, but I don't remember at this point
13 specifically reading about it or where I read
14 about it.

15 Q. Are you certain sitting here today that
16 you did read about that diagnosis at the time that
17 Doctor Rahman made it and you were confirming it
18 in Ms. Nyman's medical records?

19 A. I did.

20 Q. Do you remember how many treatises or
21 books you looked into?

22 A. I don't remember.

23 Q. Have you ever treated any other patient
24 with frozen shoulder syndrome?

1 A. Perhaps a few.

2 Q. Well, I don't want you to guess. Sitting
3 here today, do you have a recollection of -- let's
4 start out by saying do you have a recollection of
5 diagnosing any other patient with frozen shoulder
6 syndrome other than Ms. Nyman?

7 A. I don't remember diagnosing anyone else
8 with it, no.

9 Q. So then it follows that you probably
10 didn't treat anyone else either, is that fair to
11 say?

12 A. No. It may be that I take care of
13 patients for other things who also have been
14 diagnosed with frozen shoulder syndrome by another
15 practitioner.

16 Q. Sitting here today, do you have a
17 recollection in all your years of practicing
18 medicine treating anyone other than Ms. Nyman for
19 frozen shoulder syndrome?

20 A. I do. That's why I said a few, but I
21 don't have a recollection of who it was or what
22 the circumstance was.

23 Q. When you say a few patients, does that
24 mean less than three?

1 A. I'd say less than ten.

2 Q. When was the last time you recall
3 treating someone for frozen shoulder syndrome
4 other than Ms. Nyman?

5 A. Perhaps ten years ago. Not recently.

6 Q. So there would have been at least a five
7 year gap between that last patient and then Ms.
8 Nyman's diagnosis?

9 A. I don't remember the exact timing.

10 Q. What is the treatment for frozen shoulder
11 syndrome?

12 A. Physical therapy.

13 Q. Do you know specifically what type of
14 activities in physical therapy a person with that
15 diagnosis would benefit from?

16 A. I don't know.

17 Q. I take it you are not a physical
18 therapist by training?

19 A. No, I'm not.

20 Q. So you would not then actively treat
21 someone with this diagnosis, is that fair to say?

22 A. That's true. Someone with this diagnosis
23 I would generally refer to an orthopedic doctor or
24 to a rheumatologist to provide the treatment.

1 Q. Did Ms. Nyman report to you at any time
2 that she had stopped her treatment for her frozen
3 shoulder syndrome?

4 A. I don't remember.

5 Q. So apart from recording her diagnosis as
6 given by Doctor Rahman in Ms. Nyman's medical
7 records, did you ever actually treat her for that
8 condition, the frozen shoulder syndrome?

9 A. I believe I prescribed medication for her
10 at times, antiinflammatories. At times I
11 discussed with her the treatment that was being
12 recommended by her other physicians. But I do not
13 recall that I directed the treatment of that
14 condition at any time.

15 Q. Do you recall the type of
16 antiinflammatories you prescribed for her?

17 A. I don't remember.

18 Q. Do you know if they were over the counter
19 or prescription medications?

20 A. I don't remember. I would have to go
21 through a specific visit to get that information.

22 Q. Do you know whether there's a measurement
23 of what someone's range of motion would have to be
24 before they would qualify for the diagnosis of

1 employer was requiring her to engage in activities
2 that were beyond what she believed were her
3 physical capabilities?

4 A. I do not recall that.

5 Q. Do you recall any discussion with Ms.
6 Nyman about what she was being required to do in
7 the course of her daily work at the bank?

8 A. I do not.

9 Q. Do you recall Ms. Nyman ever reporting to
10 you that the bank was not abiding by any
11 limitations that had been placed on her daily
12 activities by any of her treating physicians?

13 A. I do not.

14 Q. Can you say that you did not have such a
15 conversation with her or are you saying you don't
16 recall whether you did?

17 A. Both. I do not recall any such
18 conversation. But if she had told me something of
19 that nature and I had forgotten it, it wouldn't
20 surprise me. But I have no memory of it.

21 Q. Is it your practice or was it your
22 practice when you saw Ms. Nyman for a visit that
23 you would record the information that she gave you
24 in the course of that visit?

1 Q. When she said that to you, did she tell
2 you how much weight she was able to lift?

3 A. I don't recall that she did.

4 Q. Did you ask her?

5 A. I don't remember asking that specific
6 question.

7 Q. Did you ever perform an examination in
8 which you made an effort to observe how much
9 weight she was able to lift without discomfort?

10 A. I don't remember doing an examination on
11 lifting. The examination I did was on range of
12 motion and the observance that her shoulders were
13 tender to touch and uncomfortable.

14 But I did not specifically test her
15 lifting ability. I reported that she reported to
16 me she experienced that difficulty.

17 Q. When you said you did an examination to
18 look at her range of motion, you described before
19 you were looking to see whether she could lift her
20 arms to or above her shoulders, correct?

21 A. Yes.

22 Q. Was there any other range of motion that
23 you tested her for?

24 A. Forward motion, back motion, lifting,

1 Q. It goes on to say, "She remains out of
2 work at this time unable to perform the duties of
3 her job or any other job at this time." What were
4 the duties of her job?

5 A. As I understood it, she had a certain
6 amount of lifting and clerical work to do at her
7 job.

8 Q. Do you know how much lifting she was
9 required to do?

10 A. I do not.

11 Q. Did you ask her?

12 A. I did not specifically ask her. She
13 reported to me that she was unable to perform her
14 duties, and I accepted her explanation.

15 Q. You accepted her explanation without
16 asking her what her specific duties were?

17 A. Yes.

18 Q. And you accepted her explanation without
19 exploring whether there were any possible
20 restrictions that her employer could adopt that
21 would enable her to do some aspects of her job?

22 A. I've always felt this particular patient
23 is a reliable and accurate historian. And when
24 she told me she was unable to do her job at the

1 time, I accepted that.

2 Q. Even though you had no idea what she did?

3 A. I didn't know the specifics of her job,
4 no, I did not.

5 Q. And what was the basis of your statement
6 here that she was unable to do any other job at
7 that time?

8 A. She told me that her symptoms were more
9 severe and that she was even having trouble taking
10 care of herself at home and was unable to work.
11 And I accepted that.

12 Q. Why did you not record in your notes that
13 she reported to you she was unable to care for
14 herself at home?

15 A. I don't recall.

16 Q. What did she say specifically about her
17 inability to care for herself at home other than
18 doing her hair?

19 A. That's the only specific difficulty that
20 I recall. And I believe she also said she had
21 difficulty carrying packages.

22 Q. Did you explore with her what types of
23 packages she could carry or how much weight she
24 could carry?

1 A. I did not.

2 Q. So you again accepted her, because she
3 was an accurate reporter, you accepted her
4 characterization she was unable to do any other
5 job?

6 A. Yes, I did.

7 Q. Was this her conclusion or was that your
8 conclusion?

9 A. It was her conclusion.

10 Q. I take it you didn't send her for any
11 type of workplace evaluation exam to determine
12 whether there actually was some type of occupation
13 she could engage in?

14 A. I did not.

15 Q. I take it, Doctor, there was a time when
16 you concluded that Ms. Nyman was permanently
17 disabled from engaging in any type of occupation;
18 is that correct?

19 A. I don't remember when that was but that's
20 true.

21 Q. What did you base that conclusion on?

22 A. I based it on her reports to me and on my
23 physical exam.

24 Q. Her reports to you were that she was

1 unable to do any type of work?

2 A. Yes, and that she had increasing pain and
3 stiffness in her shoulders.

4 Q. Which imposed on her the limitations you
5 described of her not being able to do her hair and
6 not being able to carry packages?

7 A. And not being able to carry out the
8 functions of her job.

9 Q. Please look at the package marked as
10 Exhibit 3. Those are the documents you produced
11 to me in response to the subpoena. These were
12 actually produced to me in reverse chronological
13 order.

14 For clarification, I've put these Post-it
15 notes on so I can direct your attention to the
16 different pages because I didn't have a chance to
17 number them before today.

18 If you could start in the back. The
19 first page that is tabbed is the heading, "This is
20 a note of a final save view prepared on 8/24/98,
21 5:47 p.m." Who is K. Spurrier?

22 A. She is a physician assistant who is
23 employed at MGH Everett.

24 Q. A physician assistant?

1 March 26 of 2003 as the date to declare her
2 permanently and totally disabled?

3 A. I believe it was because she reported to
4 me that she was unable to work after that date.

5 Q. So is it fair to say that your conclusion
6 that she was totally and permanently disabled as
7 of March 26, 2003 was based on her reporting that
8 to you?

9 A. It was based on her reporting it to me
10 and my physical exam, on-going physical exam.

11 Q. Of the nature that you have already
12 described?

13 A. Yes.

14 Q. Is there anything about your physical
15 examinations of her or your observations that
16 contributed to this conclusion of disability that
17 you have not yet testified about today?

18 A. No.

19 Q. How did you conclude that her condition
20 was exacerbated by her work environment and duties
21 in the months prior to her cessation from work
22 when you testified before that you were not aware
23 of what her duties were?

24 A. She had reported to me that her symptoms

1 of pain were made worse by the work that she was
2 doing. It was based on her report to me.

3 Q. But you don't recall her telling you
4 specifically what tasks and functions she was
5 performing at work that led to that exacerbation?

6 A. I don't recall the specific description.

7 Q. Had she given you a specific description,
8 was that something sufficiently relevant that you
9 would put into your medical notes?

10 A. Yes.

11 Q. Is it fair to say that if no such
12 description of her duties appears in her medical
13 record that she did not report to you what her
14 specific duties were?

15 A. No, it's also possible that she did
16 report them to me but that I did not consider them
17 important enough to spend the time to write them
18 down.

19 Q. It was your understanding that she left
20 work in late March of 2003 and never went back?

21 A. That's my understanding, but I don't know
22 if that's correct.

23 Q. Do you know how Ms. Nyman spent her days
24 in the months and years after she left work?

1 reviewing the old records and I believe I read
2 something to that effect. But I can't recall at
3 this time.

4 Q. Do you recall whether you were also
5 making an independent assessment that she was
6 disabled?

7 A. You're asking a difficult question to
8 answer. I understand it's an important question.
9 In one respect, disability is, can be based on
10 objective criteria that a disinterested party is
11 observing in a patient.

12 In another respect, disability can be a
13 subjective report of inability to perform
14 functions. It was my assessment at that time that
15 she was limited based on what I felt were her
16 accurate reports to me about her ability or
17 inability to work correlated with the fact that
18 she had an abnormal exam.

19 Whether or not she meets the criteria for
20 Social Security disability or work disability or
21 other types of disability depends on the criteria
22 that people are using for that disability.

23 It was my assessment at that point that
24 she was limited in her ability to work based on

1 clear diagnosis even after all of the rheumatology
2 visits that she had to explain her symptoms and
3 her condition.

4 Q. So none of the rheumatologists' notes
5 that you reviewed made a clear diagnosis of
6 arthritis?

7 A. I don't recall if they did.

8 Q. But you made the diagnosis based on the
9 possibility of that condition as observed by you
10 in her x-rays?

11 A. Yes.

12 Q. So your diagnosis as recited in this
13 letter was based on your reading of her x-rays and
14 not on anything that you had seen that was
15 prepared by a rheumatologist, is that fair to say?

16 A. I don't recall if any of the
17 rheumatologists commented on arthritis as one of
18 the possible diagnoses. Sorry, I don't recall
19 that at this time.

20 Q. What is adhesive capsulitis?

21 A. This is another way of saying frozen
22 shoulder syndrome. The capsule is the connective
23 tissue around the shoulder. Adhesion means thick
24 and sticky. And it's a medical term that means

1 tendons, again a soft tissue condition.

2 Q. Is that also a symptom as opposed to an
3 underlying causative illness or condition?

4 A. In the way that I'm using the terms, yes.
5 A tennis elbow is a tendonitis of the elbow caused
6 by repetitive motion of the arm in a back hand
7 motion. The cause of that would be the activity
8 of the tennis. The symptom would be the
9 inflammation of the tendon.

10 Most people would call that a diagnosis.
11 To me it's a description of an end result but not
12 necessarily a description of what caused it. I
13 like to think of that diagnosis as the cause of a
14 condition and not simply a description of the
15 condition.

16 Q. When you were describing arthritis of the
17 shoulders, or as you said a possible diagnosis of
18 arthritis, and the adhesive capsulitis and
19 tendonitis, was that three ways of describing the
20 fact she had inflammation and pain in her
21 shoulders?

22 A. I think that's an accurate way to put it.

23 Q. So there were three possible, they were
24 either descriptions of her symptoms or possible

C E R T I F I C A T E

I, ROBERT E. SINGER, M.D., do hereby certify that I have read the foregoing transcript of my testimony, and further certify that said transcript is a true and accurate record of said testimony.

Dated at Everett, Mass this

16 day of February, 2006.

Robert E. Singer MD

ROBERT E. SINGER, M.D.

Signed under the pains and penalties of perjury.

ERRATA SHEET

Please indicate the page number and line number along with the correction.

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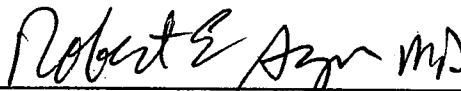
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no corrections

ROBERT E. SINGER, M.D.